

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-15-0040

Order No. S-15-0040-18-OR02

RECEIVED

18 MAY 18 PM 2:19

ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
BLUEBIRD SAND, LLC, ANTHONY D. STEWART,
F. WAYLAN HENLEY, REBECCA L. HENLEY, and
CURTIS BLANE JOHNSON

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 (Act), the Rules of the Arkansas Securities Commissioner (Rules) promulgated under the Act and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219 in accordance with an agreement by and between the Staff of the Arkansas Securities Department (Staff) and Bluebird Sand, LLC (Bluebird), Anthony D. Stewart, F. Waylan Henley, Rebecca L. Henley and Curtis Blane Johnson in full and final settlement of all claims that could be brought against the Respondents by the Staff on the basis of the facts set forth herein.

The Respondents admit the jurisdiction of the Act and the Arkansas Securities Commissioner (Commissioner), waive their rights to a formal hearing and, without admitting or denying the findings of fact made herein, consent to the entry of this order and agree to abide by its terms.

The Respondents also agree that the entry of this order will have no impact on their potential liability pursuant to Ark. Code Ann. § 23-42-106 for the violations set out below.

FINDINGS OF FACT

1. Bluebird is an Arkansas limited liability company formed on February 26, 2009. It maintains an office at 14 Bluebird Drive, Mt. Pleasant, Arkansas and a mailing address of Post Office Box 676, Melbourne, Arkansas 72556. Bluebird is in the business of extracting a particular type of sand that is very useful in fracturing shale formations in the exploration and production of oil and gas from a site referred to as a mine near Melbourne, Arkansas, .
2. Stewart, both Henleys and Curtis Blane Johnson formed Bluebird and are collectively referred to as the Founders. All four are Arkansas natives, but the Henleys now reside in southern Missouri.
3. Bluebird filed a Form D with the United States Securities and Exchange Commission (SEC) giving notice of a private placement offering of covered securities pursuant to the Securities Act of 1933 and Regulation D, Rule 506, 17 C.F.R. §230.506, on July 28, 2009. Bluebird filed a notice filing with the Arkansas Securities Department in accordance with Ark. Code Ann. §23-42-509 and Rule 509.01, Rules of the Arkansas Securities Commissioner, on the same date. The Form D stated that the first investment had occurred on July 15, 2009, and that total sales would be \$4 million.
4. The securities being offered pursuant to Regulation D, Rule 506, were membership units in Bluebird representing equity interests in Bluebird, the equivalent of stock in Bluebird were it a corporation. By offering and selling these units in this way, Bluebird was exempt from the registration provisions of state laws.
5. The effective date of the Form D was August 3, 2009. Because it was not extended by

amendment of the Form D, which is permitted by Rule 503(a)(3)(iii), 17 C.F.R.

§230.503(a)(3)(iii), the efficacy of the Form D expired on August 3, 2010.

6. The Form D specified that the offering would be limited to accredited investors as that term was then defined in Regulation D, Rule 501(a), 17 C.F.R. §230.501(a).
7. The Founders controlled Bluebird totally through their ownership of all seventy-five Class A units, each representing 1% of the equity of Bluebird and which were the only units with voting power,. The remaining twenty-five membership units of Bluebird, each representing 1% of the equity of Bluebird, were Class B units, which carried no voting rights and no power to exert any control over bluebird. Class A units of the Founders became Class B units when sold unless the Class A unit holders voted to allow the new purchasers to be a Class A unit holders. The Founders acquired their Class A units, and they each sold some or all of those units, but no other investors were ever allowed to own Class A units. In that way the Founders maintained complete control of Bluebird.
8. From July 2009 to September 2013, Bluebird and the Founders offered and sold units representing equity interests in Bluebird to some thirty-five investors (couples and limited liability companies counted as one investor). A total of \$23,232,000 in equity units were sold during this period.
9. On April 12, 2011, Bluebird executed a contract entitled “Consulting Agreement” with Kerry Johnson, the cousin of Curtis Blane Johnson, and several other persons (the Consultants). The Consultants agreed “to provide advice and assistance in obtaining capital in any form and manner acceptable to [Bluebird]” and to “represent [Bluebird] in arranging discussions and in negotiating with providers of any such capital.” As

compensation the Consultants involved in the contract were paid “a fee of 6% of the gross amount of funds received by [Bluebird].” The Consultants were paid \$96,000 for the sale of four units at \$400,000 per unit in March and April 2011.

10. The Form D filed with the SEC was filed by Bluebird and covered only the sales of units issued by Bluebird and not the sales of the units of Bluebird owned by each of the Founders.
11. At the time of the offers and sales referred to above, Regulation D, Rule 506 did not allow general solicitation. The solicitation of offers to buy from persons with whom the sellers had a preexisting business relationship were not considered general solicitation. The Founders solicited offers and sold units of their own and those offered by Bluebird to persons with whom they had family relationships and long friendships. In a few cases offers and sales were made to persons who had friendships with friends or relatives of the Founders but who had no relationship with the Founders.
12. A check of the records of the Arkansas Securities Department shows no registration of any security issued by Bluebird.
13. A check of the records of the Arkansas Securities Department shows no registration of Kerry Johnson in any capacity pursuant to the Act.

CONCLUSIONS OF LAW

14. The exemption afforded Bluebird by Regulation D, Rule 506 was vitiated by general solicitations made to some persons with whom the Founders soliciting the offers did not have an adequately significant preexisting relationship. These offers and sales were therefore the offers and sales of unregistered securities and were violations of Ark. Code

Ann. § 23-42-501.

15. The exemption afforded by Regulation D, Rule 506 did not cover or pertain to sales made by the Founders of Bluebird units they owned because the Form D was filed by Bluebird for the offer and sale of its securities and did not cover securities offered and sold by the Founders. These offers and sales were therefore the offers and sales of unregistered securities and were violations of Ark. Code Ann. § 23-42-501.
16. Bluebird's employment of Kerry Johnson as an agent of the issuer was the employment of an unregistered agent and a violation of Ark. Code Ann. § 23-42-301(b).
17. Pursuant to Ark. Code Ann. § 23-42-308(h), matters may be resolved by consent order without the institution of a formal proceeding.

ORDER

By agreement and with the consent of the Staff and the Respondents, it is hereby ordered that the Respondents, Stewart, both Henleys and Curtis Blane Johnson pay a fine of \$15,000 within thirty days of the date of this order. The Respondents are jointly and severally liable for the fine.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'B. Edmond Waters', written over a horizontal line.

B. Edmond Waters
SECURITIES COMMISSIONER

APPROVED AS TO FORM



Rebecca Hurst

*Attorney for the Respondents, Bluebird Sand, LLC,
Anthony D. Stewart, F. Waylan Henley and
Rebecca L. Henley*

Signed this 16th day of May, 2018.

Curtis Blane Johnson

Respondent, Proceeding Pro Se

Signed this ____ day of _____, 2018.

Theodore Holder

Attorney for the Staff

Signed this ____ day of _____, 2018.

APPROVED AS TO FORM

Signed this _____ day of _____, 2018.

Rebecca Hurst

Attorney for the Respondents, Bluebird Sand, LLC,

Anthony D. Stewart, F. Waylan Henley and

Rebecca L. Henley

_____
Signed this 17 day of May, 2018.

Curtis Blane Johnson

Respondent, Proceeding Pro Se

_____
Signed this 17 day of MAY, 2018.

Theodore Holder

Attorney for the Staff